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No. 06-1271

In the

Supreme Court of the United States

PAUL A. HEINRICH,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF PETITIONER

M. REED HOPPER
Counsel of Record
Pacific Legal Foundation
3900 Lennane Drive, Suite 200
Sacramento, California 95834
Telephone: (916) 419-7111
Facsimile: (916) 419-7747

Counsel for Amicus Curiae
Pacific Legal Foundation

QUESTIONS PRESENTED

1. Whether, in light of this Court's decision in *Rapanos v. United States*, 126 S. Ct. 2208 (2006), the United States Army Corps of Engineers (the Corps) was legally authorized to regulate a private property owner's development of a road through private wetlands which, by virtue of their location above local headwaters and the high water mark of a neighboring lake, have no significant nexus with navigable-in-fact waters.

2. Whether, in light of this Court's decision in *Rapanos v. United States*, 126 S. Ct. 2208 (2006), the federal courts lacked subject matter jurisdiction to enforce the Corps' attempt to prohibit a private property owner from developing a road through private wetlands which have no significant nexus with navigable-in-fact waters, and to sanction him for doing so.

3. Whether the extension of jurisdiction under the Clean Water Act to private wetlands adjacent to a water, deemed by Congress to be "non-navigable for purposes of shipping and other maritime laws," exceeds the power of Congress under the Commerce Clause, Article I, Section 8.

4. Whether, when the Corps is legally required to notify the public of a regulatory obligation to obtain individual state water quality certification before private wetlands can be altered, but fails to do so, the imposition of sanctions and penalties against a private developer who alters private wetlands without notice of the certification obligation is prohibited by the Due Process Clause of the Fifth Amendment.

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IDENTITY AND INTEREST OF AMICUS CURIAE

Under Supreme Court Rule 37,[1] Pacific Legal Foundation (PLF) respectfully submits this brief amicus curiae in support of Petitioner Paul A. Heinrich. Written consent was granted by counsel for all parties and lodged with the clerk of this Court.

PLF was founded over 30 years ago and is widely recognized as the largest and most experienced nonprofit legal foundation of its kind. PLF litigates matters affecting the public interest at all levels of state and federal courts and represents the views of thousands of supporters nationwide. PLF advocates limited government, individual rights, and free enterprise. PLF attorneys have litigated numerous cases addressing a balanced approach to environmental regulation and the scope of the Clean Water Act in this Court, including *Rapanos v. United States*.

PLF's analysis of *Rapanos* and the relevant wetlands regulations will provide a valuable and necessary viewpoint to assist the Court in resolving this case.

INTRODUCTION

Nearly twelve months ago in *Rapanos v. United States*, this Court invalidated the federal Clean Water Act regulations the government seeks to enforce in this case. Although this Court unanimously acknowledged the need for new regulations defining federal jurisdiction over wetlands, in the past year the Corps of Engineers and the Environmental Protection Agency have failed to even propose, let alone adopt, regulations implementing the *Rapanos* decision. In fact, these agencies

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[1] Pursuant to Supreme Court Rule 37.6, Amicus Curiae affirms that no counsel for any party authored any part of this brief and no person or entity made a monetary contribution for the preparation or submission of this brief.

have yet to provide internal interpretive guidelines to the district offices to ensure consistent and valid jurisdictional determinations. To the contrary, these agencies continue to enforce their illegal regulations as if this Court had never spoken. This is a breach of the public trust which must be remedied. When ordinary citizens are subject to civil and criminal penalties for the ordinary use of their property, they deserve to know what the law is. Therefore, this Court should grant the writ of certiorari and fulfill its primary purpose—to determine what the law is.

ARGUMENT

I

THIS COURT SHOULD GRANT THE WRIT OF CERTIORARI BECAUSE THE REGULATORY DEFINITION OF "WATERS OF THE UNITED STATES" ON WHICH THE GOVERNMENT RELIED WAS INVALIDATED BY THIS COURT'S *RAPANOS* DECISION

A five-justice majority in *Rapanos* held that something more than a mere "hydrological connection" between a wetland and a traditional (or navigable-in-fact) waterway is required to establish federal jurisdiction under the Clean Water Act. But, no single rationale garnered a majority vote. Four Justices, forming a plurality on the Court, determined the Act required limiting federal authority to those "relatively permanent, standing or continuously flowing bodies of water" generally recognized as "streams[,] . . . oceans, rivers [and] lakes" that are connected to traditional waters. *Rapanos*, 126 S. Ct. 2208, 2225 (2006) (Scalia, J.). These Justices would also authorize federal regulation of wetlands abutting these water bodies, but only if they contain a continuous surface water connection such that the wetland and the covered water are "indistinguishable." *Id.* at 2234. Ephemeral and insubstantial connections would not suffice. *Id.* at 2225. Justice Kennedy concurred in the

judgment but proposed a broad and undefined "significant nexus" test for determining federal Clean Water Act jurisdiction. *Id.* at 2236 (Kennedy, J., concurring in the result). Under this test, any wetland would be subject to federal regulation if it is deemed to "significantly affect" a traditional navigable waterway. *Id.* at 2248.

As Petitioner notes, there is now a direct conflict between the Seventh Circuit decision in *United States v. Gerke Excavating, Inc.*, 464 F.3d 723 (7th Cir. 2006), and the First Circuit decision in *United States v. Johnson*, 467 F.3d 56 (1st Cir. 2006), as to which of these two jurisdictional tests is controlling in *Rapanos*. The Seventh Circuit in *Gerke* held that federal wetland jurisdiction under the Clean Water Act may only be established based on Justice Kennedy's "significant nexus" test, whereas the First Circuit in *Johnson* held that federal wetland jurisdiction could be established under either the plurality approach or the Kennedy approach. A petition to resolve this conflict is now pending before this Court in *Gerke v. United States* (06-1331). That conflict alone warrants review of this case, along with *Gerke*. But, under either test, the federal regulations applied to Heinrich are unlawful. Therefore, the decision below cannot stand.

The relevant regulations interpret the statutory term "waters of the United States" to include, in addition to traditional interstate navigable waters, 33 C.F.R. § 328.3(a)(1) (2004), "[a]ll interstate waters including interstate wetlands," § 328.3(a)(2); "[a]ll other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce," § 328.3(a)(3); "[t]ributaries of [such] waters," § 328.3(a)(5); and "[w]etlands adjacent to [such] waters [and tributaries] (other than waters that are themselves wetlands)," § 328.3(a)(7). The regulations define "adjacent" wetlands as those "bordering, contiguous [to],

or neighboring" waters of the United States. § 328.3(c). They specifically provide that "[w]etlands separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes and the like are 'adjacent wetlands.'" *Id.*

In opposition to Heinrich's petition, it is likely the government will argue that this Court's decision in *Rapanos* did not strike down any part of these regulations, as it has argued in similar cases. But that argument is insupportable. Indeed, every faction on this Court—including the dissent—acknowledged that the *Rapanos* majority *did* override the existing regulations and called for the adoption of new regulations.

Justice Breyer was quite clear on the matter. In response to the *Rapanos* majority, he stated unequivocally: "In the absence of updated regulations, courts will have to make ad hoc determinations that run the risk of transforming scientific questions into matters of law." *Rapanos*, 126 S. Ct. at 2266 (Breyer, J., dissenting). That, he said, was not what Congress intended. *Id.* Therefore, he concluded, the Court's "opinions, taken together, call for the Army Corps of Engineers to write new regulations, and speedily so." *Id.* This, of course, would not be necessary if the *Rapanos* decision had not invalidated the existing regulatory definition of "waters of the United States."

Chief Justice Roberts, who joined the plurality decision, was equally clear. He first observed that this Court's prior decision in *Solid Waste Agency of Northern Cook County (SWANCC) v. United States Army Corps of Engineers*, 531 U.S. 159 (2001), had already invalidated agency interpretation of Clean Water Act authority, but new rule-making "went nowhere." *Rapanos*, 126 S. Ct. at 2235-2236 (Roberts, C.J., concurring). The Chief Justice castigated the government for failing to adopt regulations that defined federal authority in accordance with the language of the statute and that took

advantage of the *Chevron* deference standard. *Id* According to Justice Roberts, "[r]ather than refining its view of its authority in light of [this Court's] decision in *SWANCC*, and providing guidance meriting deference under [this Court's] generous standards, the Corps chose to adhere to its essentially boundless view of the scope of its power." *Id.* at 2236.

The "essentially boundless view of the scope of its power" to which the Corps chose to adhere, and to which Chief Justice Roberts refers, is embodied in the existing regulations which the *Rapanos* decision overruled, and which the Corps continues to enforce today. Because "[a]gencies delegated rulemaking authority under a statute such as the Clean Water Act are afforded generous leeway by the courts in interpreting the statute they are entrusted to administer," Chief Justice Roberts believed it was all the more lamentable that the agencies did not adopt regulations, different from the existing regulations, that recognized the "clearly limiting terms Congress employed in the Clean Water Act" and codified "*some* notion of an outer bound to the reach of their authority." *Id.* at 2235-2236.

The extent to which *Rapanos* invalidated the existing regulations defining "waters of the United States" can be discerned by comparing the jurisdictional standards expressed in the decision with the regulations' contradictory text. This comparison shows that *Rapanos* invalidated the existing regulations as to jurisdictional "tributaries" and "wetlands" and the meaning of "adjacent."

A. *Rapanos* Invalidated the Regulatory Definition of Jurisdictional Tributaries

In his plurality opinion, Justice Scalia observed, as did Chief Justice Roberts, that following *SWANCC*, "the Corps did not significantly revise its theory of federal jurisdiction." *Rapanos*, 126 S. Ct. at 2217. Instead, the Corps relied on its existing regulations, which include "tributaries" as "waters of the United States," without defining the term, and continued to

employ "sweeping assertions of jurisdiction over ephemeral channels and drains as 'tributaries.'" *Id.* By way of example, Justice Scalia cited Corps claims of jurisdiction over remote roadside ditches, irrigation ditches and drains with intermittent flows, dry land features such as "arroyos, coulees, and washes," and occasionally flowing "drain tiles, storm drain systems, and culverts." *Id.* at 2218. And, "most implausibly of all," an arid development site "located in the middle of the desert, through which 'water courses . . . during periods of heavy rain.'" *Id.*

The plurality forcefully rejected this expansive regulatory construction of "tributaries" and concluded that "on its only plausible interpretation, the phrase 'the waters of the United States' includes only those relatively permanent, standing or continuously flowing bodies of water 'forming geographic features' that are described in ordinary parlance as 'streams[,] . . . oceans, rivers [, and] lakes.'" *Id.* at 2225. But that was not all; the plurality added an additional jurisdictional limitation: "The phrase ['waters of the United States'] does not include channels through which water flows intermittently or ephemerally, or channels that periodically provide drainage for rainfall." *Id.* The plurality concluded, therefore, that "[t]he Corps' expansive interpretation of ['the waters of the United States'] is thus not 'based on a permissible construction of the statute,'", which otherwise requires broad deference to federal regulatory interpretations. *Id.* (citing *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984)). In other words, the regulations themselves were invalid.

Although Justice Kennedy did not define jurisdictional tributaries in his concurrence, he did conclude, as did the plurality, that the existing regulations went too far. "The Corps' existing standard for tributaries," he stated, provided no assurance that they (or adjacent wetlands) would significantly affect downstream navigable-in-fact waters. *Rapanos*, 126 S. Ct. at 2248. "Yet," he concluded, "the breadth of this standard—which seems to leave wide room for regulation of

drains, ditches, and streams remote from any navigable-in-fact water and carrying only minor water-volumes towards it—precludes its adoption as the determinative measure of whether adjacent wetlands are likely to play" an important role in the aquatic system. *Id.* at 2249. According to Justice Kennedy, "in many cases wetlands adjacent to tributaries covered by this standard might appear little more related to navigable-in-fact waters than the isolated ponds held to fall beyond the Act's scope in *SWANCC*." *Id.*

Thus, under both the Scalia plurality and the Kennedy concurrence, the existing regulations—enforced against Heinrich in this case—are invalid.

B. *Rapanos* Invalidated the Regulatory Definition of Jurisdictional Wetlands

Another point of conflict between the *Rapanos* decision and the existing regulations relates to wetlands. Whereas the regulations include any wetland adjacent to any "tributary" or so-called other waters, 33 C.F.R. § 328.3(a)(5), neither the plurality nor Justice Kennedy accepted this interpretation of jurisdictional wetlands. To the contrary, both the plurality's and Justice Kennedy's definitions of jurisdictional wetlands are irreconcilable with the regulatory text.

Under the plurality opinion. "*only* those wetlands with a continuous surface connection to bodies that are 'waters of the United States' [i.e., continuously flowing rivers, lakes and streams] in their own right, so that there is no clear demarcation between 'waters' and 'wetlands,' " are covered by the Act. *Rapanos*, 126 S. Ct. at 2226. "Wetlands with only an intermittent, physically remote hydrological connection to 'waters of the United States' do not implicate the boundary-drawing problem of *Riverside Bayview*, and thus lack the necessary connection to covered waters" described in *SWANCC*. *Id.* at 2226. Put another way, according to the plurality, wetlands are "waters of the United States" only if they

are "as a practical matter *indistinguishable* from waters of the United States." *Id.* at 2234. In contrast, the existing regulations, by their terms, include any wetland adjacent to any tributary without regard to a continuous surface connection, or any connection whatsoever.

The definition of jurisdictional wetlands provided by Justice Kennedy is equally at odds with the regulations. Under Justice Kennedy's "significant nexus" approach, "wetlands possess the requisite nexus, and thus come within the statutory phrase 'navigable waters,' if the wetlands, either alone or in combination with similarly situated lands in the region, significantly affect the chemical, physical, and biological integrity of other covered waters more readily understood as 'navigable.' " *Id.* at 2248. "When, in contrast, wetlands' effects on water quality are speculative or insubstantial, they fall outside the zone fairly encompassed by the statutory term 'navigable waters.' " *Id.* But the existing regulations have no such nexus requirement. Therefore, they cannot be reconciled with the *Rapanos* decision.

C. *Rapanos* Invalidated the Regulatory Definition of Adjacent

As noted above, the existing regulations define "adjacent" wetlands as those "bordering, contiguous [to], or neighboring" waters of the United States. 33 C.F.R. § 328.3(c). They specifically provide that "[w]etlands separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes and the like are 'adjacent wetlands.'" *Id.* However, both the plurality and Justice Kennedy rejected this definition of "adjacent."

Justice Scalia expressed incredulity at the breadth the Corps had given the plain term "adjacent" in the regulations. For example, he noted the Corps had concluded that wetlands are "adjacent" to covered waters under the existing regulations, and are jurisdictional, if they are hydrologically connected

"through directional sheet flow during storm events" to navigable waters; or, they lie within a 100-year floodplain that is connected to navigable waters. *Rapanos*, 126 S. Ct. at 2218. The Corps had also concluded that presence within 200 feet of a tributary automatically renders a wetland "adjacent" and jurisdictional as well as wetlands separated from flood control channels by 70-foot-wide berms. *Id.*

The plurality roundly rejected this extravagant definition of " adjacent" and offered a definition more consistent with this Court's decisions in *SWANCC* and *United States v. Riverside Bayview Homes, Inc.*, 474 U.S. 121 (1985). As Justice Scalia observed, *SWANCC* "confirmed that *Riverside Bayview* rested upon the inherent ambiguity in defining where water ends and abutting (adjacent) wetlands begin, permitting the Corps' reliance on ecological considerations *only to resolve that ambiguity* in favor of treating all abutting wetlands as waters." *Rapanos*, 126 S. Ct. at 2226. The plurality thus equated the term "adjacent" with "abutting."

Under the plurality test for jurisdiction, two findings must be made:

> First, that the adjacent channel contains a "wate[r] of the United States," (i.e., a relatively permanent body of water connected to traditional interstate navigable waters); and second, that the wetland has a continuous surface connection with that water, making it difficult to determine where the "water" ends and the "wetland" begins.

Id. at 2227. The regulatory definition of "adjacent" as "bordering, contiguous, or neighboring" is clearly inconsistent with the plurality opinion. As Justice Scalia took pains to point out:

> The phrase "adjacent wetlands" is not part of the statutory definition that the Corps is authorized to

> interpret, which refers only to "the waters of the United States." In expounding the term "adjacent" as used in *Riverside Bayview*, we are explaining *our own* prior use of that word to interpret the definitional phrase "the waters of the United States." However ambiguous the term may be in the abstract, as we have explained earlier, "adjacent" as used in *Riverside Bayview* is not ambiguous between "physically abutting" and merely "nearby."

Id. at 2229-2230.

The only conclusion that can be drawn from this inconsistency is that the regulatory definition is invalid and of no effect under the plurality approach. And, the same conclusion must be drawn from the Kennedy approach as well. Although Justice Kennedy was more nuanced in his assessment of the adjacency standard, Justice Kennedy expressly acknowledged the invalidity of the existing regulations.

Justice Kennedy's attack on the existing regulations started with his rejection of the Corps' assertion that the reasoning in *Riverside Bayview*, authorizing federal regulation of wetlands physically abutting navigable-in-fact waterways, could apply equally to all wetlands with a mere connection to navigable-in-fact waterways. *Id.* at 2248. Justice Kennedy remarked: "This, though, seems incorrect." *Id.* "The Corps' theory of jurisdiction in these consolidated cases—adjacency to tributaries, however remote and insubstantial—raises concerns that go beyond the holding of *Riverside Bayview*; and so the Corps' assertion of jurisdiction cannot rest on that case." *Id.*

From this, Justice Kennedy reasoned that if the Corps wished to regulate wetlands adjacent to tributaries categorically, like the physically abutting wetlands in *Riverside Bayview*, it would need to determine whether, due to volume of flow, proximity to navigable waters, or other relevant considerations, the tributaries perform important functions for an aquatic

system incorporating navigable waters. *Id.* Justice Kennedy concluded, as he must, that the Corps' existing standard for tributaries, however, provides no such assurance. *Id.* That is to say, neither the current case law nor the existing regulations were legally adequate to support federal regulation of wetlands, based on their "adjacency" to tributaries, as jurisdictional waters.

D. *Rapanos* Invalidated the Requirement for a State Water Quality Certification

In the decision below, the Seventh Circuit concluded that because of the minimal environmental impacts Heinrich's project would have on his wetlands, he could have proceeded, without prior federal approval, under Nationwide Permit 26, had he obtained a state water quality certification in accordance with the federal regulations. *See* Petition Appendix at 3a. But that requirement became void when this Court invalidated the federal regulations in *Rapanos* as shown above. Therefore, to find Heinrich liable for violating the Clean Water Act, either the enforcing agency or a reviewing court would have had to apply the jurisdictional test(s) set forth in *Rapanos*. That was never done.

At no time has the agency made a finding under *Rapanos* that the wetlands on Heinrich's property are jurisdictional. Nor has any court addressed the jurisdictional issue in this case in light of *Rapanos*. The Seventh Circuit ruling preceded the *Rapanos* decision and that court refused to rehear the case after the *Rapanos* decision. Accordingly, no valid jurisdictional determination has ever been made in this case. Therefore, the Seventh Circuit decision should be vacated and remanded in light of *Rapanos*.

II

THIS COURT SHOULD GRANT THE WRIT OF CERTIORARI TO RESOLVE A CONFLICT AMONG THE CIRCUITS ABOUT HOW TO INTERPRET THIS COURT'S SPLIT DECISIONS SUCH AS *RAPANOS*

Before this Court determines whether to remand any case in light of *Rapanos*, as is warranted in this case, this Court should first resolve a conflict among the circuits as to how to interpret this Court's split decisions. The inability of the circuit courts to agree on the controlling opinion in *Rapanos* and the lack of any valid federal Clean Water Act regulations, has made enforcement of the Clean Water Act contradictory and unpredictable. The rule of law calls for a uniform jurisdictional standard that only this Court can give.

In *United States v. Johnson*, 467 F.3d 56 (1st Cir. 2006), the First Circuit expressly rejected the conclusion of the Seventh Circuit in *Gerke* (06-1331, petition pending) that Justice Kennedy's "significant nexus" test in *Rapanos* is the "narrowest grounds" and the controlling opinion under *Marks v. United States*, 430 U.S. 188 (1977).

In *Marks*, this Court stated that "[w]hen a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, 'the holding of the Court may be viewed as that position taken by those Members *who concurred in the judgments on the narrowest grounds.*'" 430 U.S. at 193 (quoting *Gregg v. Georgia*, 428 U.S. 153, 169 n.15 (1976) (emphasis added)). This test has been recognized as the *only* approach sanctioned by this Court for interpreting its split decisions. *In re Michael Francis Cook*, 322 B.R. 336, 341 (N.D. Ohio 2005) ("The only approach approved by the Supreme Court is the 'narrowest grounds' approach.").

However, the *Johnson* court points out that a number of circuits have abandoned this Court's *Marks* approach to split opinions or applied *Marks* selectively. Instead, they have sought to divine the controlling opinion in this Court's fragmented decisions, like *Rapanos*, by adopting a "pragmatic" approach to the situation. This approach involves assessing which grounds would "command a majority of the Court." *Johnson*, 467 F.3d at 64. In *Tyler v. Bethlehem Steel Corp.*, 958 F.2d 1176, 1182 (2d Cir. 1992), for example, the court concluded: "In essence, what we must do is find common ground shared by five or more justices." *See also United States v. Williams*, 435 F.3d 1148, 1157 (9th Cir. 2006) ("We need not find a legal opinion which a majority joined, but merely 'a legal standard which, when applied, will necessarily produce results with which a majority of the Court from that case would agree.'") (quoting *Planned Parenthood v. Casey*, 947 F.2d 682, 693 (3d Cir. 1991)).

The courts that have adopted this approach are not particular as to the Justices that may be joined in a "majority." In contrast to the directive in *Marks*, that the controlling opinion must be found among those Justices who concurred in the judgments, some circuits give equal weight to the dissenting Justices. The Seventh Circuit in *Gerke*, which purported to apply *Marks*, relied on the fact that "any conclusion that Justice Kennedy reaches in favor of federal authority over wetlands in a future case will command the support of five Justices (himself plus the four dissenters)." *Gerke*, 464 F.3d at 725. The *Johnson* court used similar logic to justify its determination that federal jurisdiction over wetlands could be established under either the plurality standard in *Rapanos* or the Kennedy standard:

> If Justice Kennedy's test is satisfied, then at least Justice Kennedy plus the four dissenters would support jurisdiction. If the plurality's test is

> satisfied, then at least the four plurality members plus the four dissenters would support jurisdiction.

Johnson, 467 F.3d at 64.

In *Student Public Interest Research Group of New Jersey, Inc. v. AT & T Bell Labs*, 842 F.2d 1436 (3d Cir. 1988), the Third Circuit examined *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 483 U.S. 711 (1987), to determine the controlling opinion. In *Pennsylvania*, this Court was asked to address the availability of contingency fees under federal fee-shifting statutes. This Court split along the lines of *Rapanos* with four Justices in the plurality, four Justices in the dissent, and Justice O'Connor's lone concurrence in the judgments. The Third Circuit determined that "[b]ecause the four dissenters would allow contingency multipliers in all cases in which Justice O'Connor would allow them, her position commands a majority of the Court" and is controlling. *Student*, 842 F.2d at 1451.

In *King v. Palmer*, 950 F.2d 771 (D.C. Cir. 1991), the D.C. Circuit took a different approach. According to *Johnson*, the D.C. Circuit "refused to examine the points of commonality among Justice O'Connor's opinion and that of the dissent, relying mainly on a literal reading of *Marks's* [sic] language that the holding is the position of the Justices '*who concurred in the judgments* on the narrowest grounds.' " *Johnson*, 467 F.3d at 65. The D.C. Circuit relied as well on the fact that this Court "had not explicitly applied *Marks* to situations where concurring and dissenting votes would be combined." *Id.*

This widespread circuit conflict has not gone unnoticed by this Court. This Court has remarked on how the *Mark's* inquiry has "so obviously baffled and divided the lower courts that have considered it." *Nichols v. United States*, 511 U.S. 738, 745-746 (1994). It is time, therefore, for this Court to address this conflict.

CONCLUSION

In the absence of valid regulations defining federal jurisdiction under the Clean Water Act, and in the face of the circuit conflict over how to interpret the *Rapanos* decision, this Court should grant the writ of certiorari and set forth a uniform standard for the exercise of federal authority over inland wetlands.

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Respectfully submitted,

M. REED HOPPER
Counsel of Record
Pacific Legal Foundation
3900 Lennane Drive, Suite 200
Sacramento, California 95834
Telephone: (916) 419-7111
Facsimile: (916) 419-7747

Counsel for Amicus Curiae
Pacific Legal Foundation